

May 16, 1997

HAND DELIVERY

Ms. Regina M. Keeney
Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 500
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

Dear Ms. Keeney:

This letter responds to the April 25, 1997 letter to you from Southwestern Bell Telephone Company ("SWBT"), in which SWBT contends that the Commission's interconnection rules permit LECs to charge the undersigned and other paging providers for the costs LECs incur in delivering LEC-originated traffic to paging networks. As explained below, SWBT's request is not only procedurally defective, its underlying contentions are wrong as a matter of law and sound public policy and must be rejected.¹

SWBT argues that LECs must be able to charge paging providers for the facilities used to transport SWBT's traffic to a paging network. Otherwise, according to SWBT, the LEC will not be able to recover the costs of these facilities. SWBT ignores the plain language of the Communications Act and the Commission's regulations.² As the Common Carrier Bureau previously stated with regard to this very issue:

[S]ection 251(b)(5) of the 1934 Act, as amended by the Telecommunications Act of 1996, prohibits LECs from charging CMRS carriers to terminate traffic that originates on the LECs' networks.³

¹ SWBT initially insisted on the payment of prohibited "facilities" charges into escrow, under a threat that it will "cease provisioning" interconnection to our companies if we do not establish such escrow accounts. While SWBT has apparently decided against this course for now, any failure by SWBT to maintain our interconnections or provide additional trunks as needed will quickly cause the degradation of our paging services by undermining our ability to serve existing and new customers effectively. For these reasons, such a failure is tantamount to disconnection.

² 47 U.S.C. § 251(b)(5); 47 C.F.R. § 51.703(b).

³ Letter from Regina M. Keeney, Chief, Common Carrier Bureau, to Cathleen A. Massey, Kathleen Q. Abernathy, Mark Stachiw, and Judith St. Ledger-Roty, March 3, 1997 ("Keeney" (.. continued))

The statute and section 51.703(b) of the Commission's rules could not be clearer: a LEC must bear the costs it incurs in transporting calls -- including paging calls -- that originate on its network and terminate on the network of a paging provider. SWBT's request, although couched in terms of "clarification," is a thinly-veiled attempt to seek reconsideration of section 51.703(b) as applied to paging. As such, its request is grossly late and should be rejected summarily.

Even on the merits, SWBT's claims fail. SWBT would turn the statute on its head by enabling a LEC to charge a paging carrier for the costs that the LEC incurs in bringing its calls to that carrier. Neither Congress nor the Commission contemplated such a result.⁴ To the contrary, "paging providers, as telecommunications carriers, are entitled to mutual compensation for the transport and termination of local traffic, and should not be required to pay charges for traffic that originates on other carriers' networks . . .".⁵

SWBT attempts to argue that, even if it cannot charge for traffic originated on the LEC network, it is somehow permitted to charge for the facilities used to transport that traffic to the

Letter").

⁴ SWBT draws a false analogy between the situation in which a call is originated on the SWBT network and terminated by another telecommunications carrier, such as a paging provider, and the situation in which a call both originates and terminates on the SWBT network. In both cases, SWBT receives payment from the calling party. In the latter case, it both originates and terminates the call. Where a carrier only originates a call, by contrast, as in the former case, the originating carrier may not charge the carrier that terminates the call. SWBT does not charge adjacent unaffiliated LECs for the costs of bringing originating traffic to the adjacent LECs' networks for termination. To the contrary, where the terminating carrier performs the switching and termination functions, it is entitled to compensation from the originating carrier. See 47 U.S.C. § 252(d)(2)(A)(i). This is no less the case with respect to paging traffic. SWBT's real complaint is that the statute and the Commission's rules apply this policy to interconnection between LECs and all telecommunications carriers, including paging networks.

⁵ Implementation of Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, FCC 96-325 (rel. Aug. 8, 1996), at ¶ 1092 (emphasis added) (Local Competition Order); see also id. at ¶¶ 1008, 1042 (LEC "must provide [LEC-originated traffic to the CMRS provider . . . without charge]"). The requirement that LECs enter into mutual compensation arrangements with CMRS providers predates the Telecommunications Act of 1996. See 47 C.F.R. § 20.11(b).

interconnecting paging carrier's network. This argument also finds no support in fact, in the law, or in the Local Competition Order.⁶ As an initial matter, the facilities in question are part of the LEC's network, installed by the LEC to handle LEC-originated traffic. Section 51.703(b) of the Commission's rules clearly states that a LEC may not assess charges on a paging provider or any other terminating carrier -- regardless of how such charges are denominated -- for local traffic that originates on the LEC's network. Section 51.703 implements the statutory mandate for reciprocal compensation arrangements between carriers.⁷ LECs may not charge a terminating carrier -- whether landline CLEC or CMRS provider -- for the costs of facilities used by the LEC to transport traffic to the terminating carrier's switch. The intent of this rule is not limited to preventing a LEC from assessing charges "on traffic" or on a per-minute basis, as SWBT suggests. Rather, the rule in part responds to record evidence that LECs were charging paging providers for the facilities used by the LEC to transport traffic to the paging carriers' networks.⁸ The Commission specifically ruled that LECs must discontinue such charges as of the effective date of the local competition rules.⁹

The fact that paging carriers predominantly receive traffic from the LEC does not change the relationship between the LEC and an interconnecting paging provider. Paging traffic is no different than other traffic. Like all other switches, paging switches provide certain information to the LEC switch, such as answer supervision and call terminating signaling. The paging network also provides information to the calling party, including voice prompts, voice mail, and information about the status of a message. Indeed, the Commission has found that paging providers, like all other telecommunications carriers, are entitled to compensation from a LEC for terminating traffic that originates on the LEC's network.¹⁰

Finally, SWBT argues that the paging providers' interpretation of section 51.703 would render section 51.709 a nullity. In fact, it is SWBT that would negate section 51.703 by having

⁶ As a threshold matter, it is unclear what "charges based on traffic" would be, other than a description of the rate structure for recovering the costs of LEC facilities.

⁷ Local Competition Order at ¶ 1042. Although section 51.703 was originally stayed by the Eighth Circuit Court of Appeals, the court lifted the stay with respect to that section on November 1, 1996. Iowa Utils. Bd., et. al. v. FCC, No. 96-3321 (8th Cir., Nov. 1, 1996).

⁸ See, e.g., id. at ¶ 1030.

⁹ Id. at ¶ 1042.

¹⁰ Id. at ¶ 1093.

LECs continue to charge for their facilities that they use to bring traffic to a paging provider's switch. Each of these sections addresses a different issue: section 51.703 implements the general mandate for reciprocal compensation ("[a] LEC may not assess charges"); section 51.709 establishes a rate structure for facilities shared by interconnecting carriers for the transport and termination of local traffic. Section 51.709 does not come into play unless a carrier purchases facilities from a LEC to terminate traffic on the LEC's network. Contrary to SWBT's assertions, the rate structure rule in section 51.709 does not authorize a LEC to collect charges in violation of the reciprocal compensation mandate of section 51.703 of the Commission's rules and section 251(b)(5) of the Communications Act.

At bottom, SWBT's self-styled request for "clarification" is in fact an untimely petition for reconsideration of the Commission's decision to treat paging providers like all other telecommunications carriers in the Local Competition Order.¹¹ SWBT "cannot believe" that the Commission would apply the reciprocal compensation rule to traffic terminating on a paging network. As the Commission has explicitly found, however, the statute compels such a result.¹² The Commission should reject SWBT's attempt to use section 51.709 to defeat the application of this rule to paging providers. Section 51.709 does not permit a LEC to impose a "facilities"

¹¹ SWBT's letter admits as much, "[a]lternatively . . . petition[ing] for a change in the rules to allow LECs to recover reasonable costs from paging providers."

¹² See Keeney Letter at 2-3. In other respects as well, paging carriers are treated like other telecommunications carriers. For instance, paging providers have a duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers, 47 U.S.C. § 251(a), and must contribute to the preservation and advancement of universal service. *Id.* § 254(d). See also Federal-State Joint Board on Universal Service, Report and Order, FCC 97-157 (rel. May 8, 1997), at 400 ¶ 780. Having been required to interconnect with and contribute universal service support to the LECs, paging providers are surely entitled to the same right as other carriers to reciprocal compensation under section 51.703.

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charge in derogation of a paging provider's right to be treated like any other telecommunications carrier under section 51.703.

Sincerely,

Kathleen Q. Abernathy / by SFS

Kathleen Q. Abernathy
AirTouch Communications, Inc.
1818 N Street, N.W.
8th Floor
Washington, D.C. 20036

Cathleen A. Massey / by SFS

Cathleen A. Massey
AT&T Wireless Services, Inc.
1150 Connecticut Avenue, N.W.
4th Floor
Washington, D.C. 20036

Mark A. Stachiw / by SFS

Mark A. Stachiw
AirTouch Paging
12221 Merit Drive
Suite 800
Dallas, Texas 75251

Judith St. Ledger-Roty / by SFS

Judith St. Ledger-Roty
Kelley Drye & Warren, LLP
(for Page Net, Inc.)
1200 19th Street, N.W.
Suite 500
Washington, D.C. 20036

cc: Richard Metzger
Mary Beth Richards
James Schlichting
Ed Krachmer
Dan Phythyon
William Kennard
Aliza Katz
Thomas Boasberg
James Casserly
James Coltharp
Suzanne Toller
Dan Gonzales
Secretary, FCC (2)